

UNITED STATES OF AMERICA

v.

Manning, Bradley E.
PFC, U.S. Army,
HHC, U.S. Army Garrison,
Joint Base Myer-Henderson Hall
Fort Myer, Virginia 22211

Prosecution Motion in Limine
to Exclude Motive Evidence

16 November 2012

RELIEF SOUGHT

The prosecution in the above case respectfully requests that this Court preclude the defense from raising evidence of motive in the merits portion of the trial. The Government seeks said exclusion to increase the efficiency of the proceedings and to ensure only admissible evidence is presented during the merits portion of the trial because motive evidence is irrelevant. See MRE 402.

BURDEN OF PERSUASION AND BURDEN OF PROOF

The burden of proof on any factual issue, the resolution of which is necessary to decide a motion, shall be by preponderance of the evidence. RCM 905(c)(1). The burden of persuasion on any factual issue, the resolution of which is necessary to decide a motion, shall be on the moving party. RCM 905(c)(2). The prosecution has the burden of persuasion as the moving party. However, the burden is on the proponent of evidence to establish its relevancy. United States v. Simmons, 48 M.J. 193, 196 (C.A.A.F. 1998) (citing MRE 103).

FACTS

The Accused is charged with one specification of aiding the enemy, one specification of disorders and neglects to the prejudice of good order and discipline and service discrediting, eight specifications of violations of 18 U.S.C. § 793(e), five specifications of violations of 18 U.S.C. § 641, two specifications of violations of 18 U.S.C. § 1030(a)(1), and five specifications of violating a lawful general regulation, in violation of Articles 104, 134, and 92, Uniform Code of Military Justice (UCMJ). See Charge Sheet.

WITNESSES/EVIDENCE

The prosecution requests the Court consider the charge sheet and the cited Appellate Exhibits (AE).

LEGAL AUTHORITY AND ARGUMENT

I. THIS COURT SHOULD PRECLUDE THE DEFENSE FROM RAISING DURING THE MERITS PORTION OF THE TRIAL ISSUES REGARDING THE MOTIVE OF THE ACCUSED IN COMMITTING HIS CRIMES BECAUSE HIS MOTIVE IS IRRELEVANT.

The Accused's motive behind his misconduct is irrelevant to all charged offenses and all cognizable defenses. There are circumstances where evidence of motive or purpose is relevant circumstantial evidence, but that is not the case for the charges in the case at bar. Motive is neither direct nor circumstantial evidence negating the requisite intent that the Accused knowingly gave intelligence to the enemy in support of Charge I, Specification 1; that the Accused wrongfully and wantonly caused the information to be published on the internet with knowledge that it would be accessible to the enemy in support of Charge II, Specification 1; that the Accused's conduct was willful in support of Charge II, Specifications 2, 3, 5, 7, 9, 10, 11, 12, 13, 14, and 15; that the Accused knowingly and willfully stole, purloined, or converted a thing of value to the United States in support of Charge II, Specifications 4, 6, 8, 12, and 16; or the Accused had a duty to obey and violated a lawful general regulation in support of Charge III. See Charge Sheet.

Throughout the pre-trial proceedings, the defense has raised motive to attempt to excuse the Accused's misconduct, particularly in regard to the 18 U.S.C. § 793 charges, by claiming that the Accused acted with a good faith motive and did not intend to injure the United States or to give an advantage to a foreign nation. For example, the defense would like to call (b) (7)(A), (b) (7)(B), (b) (6)

See AE 344 (Def. Witness List) at 8-9. Such alleged motive, whether self-serving or selfless, does not provide "authority for a self-help remedy of disobedience." United States v. New, 55 M.J. 95, 108 (C.A.A.F. 2001) (quoting United States v. Johnson, 45 M.J. 88, 92 (C.A.A.F. 1996)).

Military courts have long recognized that motive is only relevant to the extent it establishes a recognized defense. United States v. Huet-Vaughn, 43 M.J. 105, 114-15. The Supreme Court emphasized "the essence of military service is the subordination of the desires and interests of the individual to the needs of the service." United States v. Washington, 57 M.J. 394, 397 (C.A.A.F. 2002) (citing Orloff v. Willoughby, 345 U.S. 83, 92 (1953)).

In Huet-Vaughn, for example, the Accused, an Army captain, refused to deploy in support of Operation Desert Shield. Huet-Vaughn, 43 M.J. at 107. The defense counsel asserted his client's motive was not to avoid hazardous duty, but rather to expose what the Accused felt were impending war crimes in the Persian Gulf and report those crimes to the public. Id. Defense counsel sought to introduce evidence challenging President George Bush's decision to deploy soldiers to the Middle East. Id. Additionally, the defense counsel sought to discuss the Accused's contention that she was a conscientious objector. Id. After hearing the case, C.A.A.F. upheld the trial judge's decision that the Accused's "motives were irrelevant to the question whether she quit her unit with intent to avoid hazardous duty or shirk important service." Id. at 113. Specifically, the Court found that "[t]o the extent that [the Accused] quit her unit as a gesture of protest, her motive for protesting was irrelevant." Id. at 114 (citing United States v. Johnson, 24 M.J. 101, 106 (C.M.A. 1987) (holding that saboteur's purpose and motive in committing his crimes were immaterial in his criminal prosecution)).

Courts recognize the difference between "motive" and "intent." An accused may harbor two or more intentions for committing a certain act. Huet-Vaughn, 43 M.J. at 113-14 (citing Wayne R. Lafave and Austin W. Scott, Jr., 1 Substantive Criminal Law, § 3.5(d) (1986)). These "intentions may consist of an immediate intention (intent) and an ulterior one (motive)." Id. Stated another way, intention is a determination to act in a certain way; motive is that which incites and stimulates the formation of the intention. United States v. Diaz, Answer on Behalf of the Government, 2008 WL 6170630, at *11 (citing Clark & Marshall, A Treatise on the Law of Crimes 163 (7th ed. 1967)). It is the intent, not the motive, that determines the criminality of the act. Id. "[S]o long as the [accused] has the intention required by the definition of the crime, it is immaterial that he may also have some other intention." Huet-Vaughn, 43 M.J. at 113-14 (citing Wayne R. Lafave and Austin W. Scott, Jr., 1 Substantive Criminal Law, § 3.5(d) (1986)).

Similarly, in Diaz, C.A.A.F. determined that any noble motives the Accused may have had when he released classified information about detainees at Guantanamo Bay were irrelevant to issue of whether he intentionally violated the Espionage Act. United States v. Diaz, 69 M.J. 127, 132 (C.A.A.F. 2010) ("The mens rea requirement contained in the § 793(e) is clear: it does not include an element of bad faith or ill intent.").¹ The critical language in § 793(e) is that the Accused had "reason to believe" the information "*could be used* to the injury of the United States or to the advantage of any foreign nation." Id. at 132. The Accused made a conscious choice to communicate the covered information; therefore, willfully committed the misconduct. See id. at 132; see also United States v. McGuinness, 35 M.J. 149, 153 (C.M.A. 1992) (holding that § 793(e) does not require proof of a defendant's bad faith); United States v. Kiriakou, 2012 WL 4903319, at *5 (E.D. Va. Oct. 16) (denying defense discovery requests in a § 793 case that would support a good faith defense because "any claim that he acted with a salutary motive, or that he acted without a subversive motive, when he allegedly communicated NDI to journalists is not relevant").

Accordingly, the trier of fact should not consider the factors that motivated the Accused to commit his misconduct. Regardless of whether the Accused was allegedly following the dictates of his conscience, he committed the charged offenses with the requisite intent. Intent, not motive is what criminalizes or decriminalizes an act. Any other understanding of the law would allow individuals to commit a multitude of crimes as long as they had a pure or legitimate motive. Evidence of motive, therefore, is irrelevant during the case on the merits and should be reserved, if at all, for matters to be presented in extenuation and mitigation at sentencing.

II. THE COURT SHOULD MAKE THE DETERMINATION ON WHETHER OR NOT TO PRECLUDE MOTIVE EVIDENCE IN ADVANCE OF TRIAL


The Court gains considerable advantages by determining in advance whether or not motive evidence is irrelevant and inadmissible during the merits portion of the trial. The possibility of irrelevant information being discussed is much more likely without a predetermination of

¹ It should be noted that C.A.A.F. concluded that the military judge erred by denying Appellant the opportunity to introduce motive evidence to defend against a charge under Article 133, UCMJ. Diaz, 69 M.J. at 129. Specifically, the Court found that evidence of honorable motive may inform a factfinder's judgment as to whether conduct is unbecoming an officer since Article 133, UCMJ takes into account all circumstances surrounding the conduct, such as the concept of honor. Id. at 136. Obviously, those circumstances do not exist in the case at bar.

relevancy on these controversial issues. See, e.g., Huet-Vaughn, 43 M.J. at 105 (containing numerous examples of the Accused testifying to irrelevant matters, Trial Counsel objecting, and the Judge sustaining the objections). Defining these issues before trial would certainly be more efficient by not only precluding discussion of irrelevant evidence, which may confuse the issues for the trier of fact, but also by preventing the litigation of extraneous issues during an already presumably lengthy trial. In addition, a predetermination of relevancy is more efficient in that it avoids producing and calling irrelevant witnesses.

CONCLUSION

The prosecution respectfully requests the Court grant the prosecution's motion in limine and preclude the defense from raising evidence of motive in the merits portion of the trial pursuant to MRE 402 as the evidence is irrelevant. The Government seeks said exclusion to increase the efficiency of the proceedings and to ensure only admissible evidence is presented during the merits portion of the trial



ANGEL M. OVERGAARD
CPT, JA
Assistant Trial Counsel

I certify that I served or caused to be served a true copy of the above on Defense Counsel via electronic mail on 16 November 2012.



ANGEL M. OVERGAARD
CPT, JA
Assistant Trial Counsel